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JAMES R. BROWNING

No. 418

In the Supreme Court of the United States

OCTOBER TERM, 1959

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, AND LOCAL No. 4372, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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The Board acted within its allowable discretion in ordering petitioners to refrain from coercing and restraining not only the employees of the immediate employer involved in the instant case but also the employees of any other employer in the exercise of rights guaranteed by Section 7 of the National Labor Relations Act	17
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CITATIONS

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National Labor Relations Board v. *Seven-Up Bottling Co.*, 344 U.S. 344	18
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Statute:

National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*):	
Section 7	2, 3, 14, 18
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OPINIONS BELOW

The opinion of the Court of Appeals (R. 105) is reported at 266 F. 2d 823. The Board's Decision and Order (R. 65–70) are reported at 120 NLRB 684.

JURISDICTION

The judgment of the Court of Appeals was entered on May 14, 1959 (R. 104), and a motion for reconsideration and rehearing was denied on June 26, 1959 (R. 113). The petition for a writ of certiorari was filed on September 22, 1959, and was granted on November 16, 1959 (R. 113). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*) are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3).
>
> * * * * *
>
> SEC. 8(b) It shall be an unfair labor practice for a labor organization or its agents—
>
> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: * * *
>
> * * * * *
>
> SEC. 10(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *
>
> (b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member there-

> of, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: * * *.
>
> (c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *.

QUESTION PRESENTED

Whether the National Labor Relations Board, in ordering petitioners to cease and desist from coercing and restraining not only the employees of the Ohio Consolidated Telephone Company (the particular employer involved in this case), but also employees of any other employer in the exercise of rights guaranteed by Section 7 of the National Labor Relations Act, acted within its allowable discretion to select an appropriate remedy.

STATEMENT

A. The Board's findings of fact

The Board found that petitioners (a national labor union and its affiliated local), in violation of Section